

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND**

In Re: Charles S. Phelps, Jr.	Case Number 17-10759-DF Chapter 13
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HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR PHH ALTERNATIVE TRUST, SERIES 2007-3
AND/OR ITS SUCCESSORS AND ASSIGNS

Movant.

v.

CHARLES S. PHELPS, JR.,

Debtor.

MOTION OF HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR PHH ALTERNATIVE TRUST, SERIES 2007-3 FOR RELIEF FROM THE CO-DEBTOR STAY PURSUANT TO 11 U.S.C. SECTION 1301(c) AND FOR LEAVE TO FORECLOSE MORTGAGE

HSBC Bank USA, National Association as trustee for PHH Alternative Trust, Series 2007-3 (hereinafter referred to as the “Movant”), a secured creditor, hereby moves this Court for Relief from the Co-Debtor Stay pursuant to 11 U.S.C. Section 1301(c) and for leave to foreclose a certain mortgage encumbering the property owned by the Debtor and by the Co-Debtor, Thomas Wotherspoon, known as *132 Carolina Nooseneck Road, Richmond, RI 02898*. In support of this Motion, Movant states as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1334 and 28 U.S.C. 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code (the “Bankruptcy Code”). This proceeding is a “core” proceeding as this term is defined in the Code.
2. On May 9, 2017, Charles S. Phelps, Jr. (hereinafter referred to as the “Debtor”) filed a voluntary Chapter 13 Petition in Bankruptcy. The Plan was confirmed on September 8, 2017.
3. Movant is the current holder of a certain mortgage given by the Debtor and by Thomas Wotherspoon (hereinafter referred to as the Co-Debtor) to Greenwood Credit Union in the original principal amount of \$269,600.00 dated April 30, 2007, and in Book 236, Page 762 in the Records of Land Evidence in the Town of Richmond, RI (the “Mortgage”). A copy of the Mortgage is attached hereto as Exhibit A.

4. The Mortgage secures a promissory note of even date and original principal amount given by the Debtor to Greenwood Credit Union (the “Note”) of which Movant is the current holder. A copy of the Note is attached hereto as Exhibit B.

5. Greenwood Credit Union assigned the Mortgage to PHH Mortgage Corporation by assignment dated May 3, 2007 and recorded with the Town of Richmond Land Evidence Records in Book 242, Page 536 a copy which is attached here to as Exhibit C. PHH Mortgage Corporation, in turn, assigned the Mortgage to HSBC Bank USA, National Association As Trustee For PHH Alternative Mortgage Trust, Series 2007-3 by assignment dated June 26, 2012 and recorded with the Town of Richmond Land Evidence Records in Book 277, Page 111 a copy which is attached here to as Exhibit D. A corrective assignment was recorded from Greenwood Credit Union to PHH Mortgage Corporation dated May 20, 2016 with the Town of Richmond Land Evidence Records in Book 307, Page 364 a copy which is attached here to as Exhibit E. An additional corrective assignment was recorded from PHH Mortgage Corporation to HSBC Bank USA, National Association As Trustee For PHH Alternative Mortgage Trust, Series 2007-3 dated January 5, 2016 with the Town of Richmond Land Evidence Records in Book 301, Page 870 a copy which is attached here to as Exhibit F. The current loan servicer for the Movant is PHH Mortgage Corporation.

6. The Mortgage encumbers real property known as *132 Carolina Nooseneck Road, Richmond, RI 02898* (hereinafter referred to as the “Property”). Copies of the Mortgage and Note are attached hereto as Exhibits “A” and “B” respectively. The Mortgage is in first lien position. Aside from the Property, there is no other collateral securing the Debtor’s obligation to Movant.

7. The Debtor and Co-Debtor have defaulted on the Note and Mortgage by failing to make post-petition payments to Movant.

8. As of May 11, 2018, the balance due Movant on the Note was approximately \$265,511.84 (may not include negative escrow balances or recent escrow advances). The full amount of the Movant’s claim together with allowable post-petition interest, reasonable attorney fees, court costs, and other recoverable expenses is secured by the Mortgage.

9. According to the Debtor’s Schedules, the fair market value of the Property is \$273,100.00. Accepting the Debtor’s valuation for purposes of this motion only, the liquidation value of the Property is \$257,688.74 based upon a usual and customary broker’s commission of \$13,655.00 (5% of stated fair market value), deed stamps of \$1,256.26, and \$500.00 in miscellaneous estimated closing costs.

10. As of May 10, 2018, Movant has not received any post-petition mortgage payments from either the Debtor or the Co-Debtor since the payment credited to the September 1, 2017 post-petition due date. The current monthly payment is \$2,374.21, subject to such subsequent adjustment as may be specified in the Note.

11. As of May 10, 2018, Debtor and Co-Debtor owed Movant a total post-petition arrearage of \$18,302.47 calculated as follows:

- 7 monthly payments (10/01/17 - 04/01/18) at \$2,374.21/mo.	\$18,993.68
- Motion Fees and Costs	\$1,031.00
-Plan Review/Proof of Claim	\$650.00
-Suspense Balance	(2,372.21)
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Total Post-Petition Arrearage	\$18,302.47

12. The pre-petition arrearage owed to the Movant as of the filing date of the petition was \$28,819.56.

13. In addition to the Mortgage to Movant, there are outstanding liens on the Property as follows:

<u>Lien</u>	<u>Type</u>	<u>Amount</u>	<u>Book/Page</u>
Movant	1 st Mortgage	\$265,511.84	236/762
Portfolio Recovery Association	Execution	\$5,670.37	249/589

The total of all liens on the Property is approximately \$271,182.21.

14. Movant is entitled to relief from the Co-Debtor stay pursuant to 11 U.S.C. Section 1301(c) in that the Debtor's mortgage account with Movant is now three (3) months delinquent post-petition.

15. Upon written request, PHH Mortgage Services will provide the following information regarding the subject loan:

- * A copy of the payment history through the date the account was last less than 60 days past due.
- * A copy of the note.
- * The name of the investor that holds the loan.

Requests for this information/documentation can be sent to us at the following address:

PHH Mortgage Services
PO Box 5469
Mt. Laurel, NJ 08054

16. Within twenty (20) days after service, if served electronically, as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if served by mail or other excepted means specified, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response to said paper with the Bankruptcy Court Clerk's Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is

forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.

WHEREFORE, Movant requests that this Honorable Court:

- (a) Grant Movant Relief from the Co-debtor Stay pursuant to 11 U.S.C. Section 1301(c), and for leave to Foreclose Mortgage, allowing Movant, its successors or assigns to foreclose said mortgage (including, at its sole option, leave to accept a deed-in-lieu of foreclosure from the Debtor and/or the Co-Debtor, their heirs, successors, assigns or transferees); and for it or a third party purchaser to prosecute summary process proceedings to evict any persons residing in the Property. Movant also seeks relief from the Co-Debtor Stay to pursue the Co-Debtor via such collection methods as are authorized by law for any deficiency that may result from Movant's foreclosure sale of the Property.
- (b) Grant such other Relief as this Honorable Court may deem just.

Date: June 19, 2018

Respectfully submitted,
HSBC Bank USA, National Association as trustee
for PHH Alternative Trust, Series 2007-3
By its attorney,

/s/ Catherine V. Eastwood
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